

J. Devlan Geddes
Jeffrey J. Tierney
GOETZ, BALDWIN & GEDDES, P. C.
35 North Grand
P.O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144
Email: devlan@goetzlawfirm.com
jtierney@goetzlawfirm.com

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, BUTTE DIVISION**

BAR K RANCH, LLC,

Plaintiff,

vs.

UNITED STATES OF AMERICA;
STATE OF MONTANA; U.S.
BUREAU OF LAND MANAGEMENT;
U.S. FOREST SERVICE; MONTANA
DEPARTMENT OF FISH, WILDLIFE
& PARKS; MADISON COUNTY
COMMISSION; MONTANA
DEPARTMENT OF NATURAL
RESOURCES & CONSERVATION;
IMERYS TALC AMERICA, INC., f/k/a
LUZENAC AMERICA, INC., a
Delaware Corporation; and WALSH
EUGENE CARTER BYPASS TRUST,

Defendants.

Cause No. _____

Hon. _____

**COMPLAINT TO QUIET
TITLE AND FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff Bar K Ranch, LLC, through counsel, states its cause of action and alleges as follows:

NATURE OF THE ACTION

1. This is an action for declaratory, injunctive and other equitable relief pursuant to the federal Quiet Title Act, the federal Declaratory Judgments Act, and relevant provisions of Montana law. Plaintiff seeks clarification, on behalf of itself and the people of Montana, as to the existence, nature and location of certain established public and private rights of way over a system of historical roads in Madison County, Montana. It further seeks to quiet title thereto and other related relief.

PARTIES

2. Plaintiff Bar K Ranch, LLC (“Bar K”) is a Montana limited liability company which owns certain real property located in Madison County, Montana that is accessible via the roads at issue in this matter.

3. Defendant United States of America is the owner of certain lands traversed and bordered by the roads at issue in, and encompassing the rights of way claimed by, this action.

4. Defendant State of Montana is the owner of certain lands traversed and bordered by the roads at issue in, and encompassing the

rights of way claimed by, this action.

5. Defendant U.S. Bureau of Land Management (“BLM”) is a federal agency within the U.S. Department of the Interior. It administers certain federal lands traversed and bordered by the roads at issue in, and encompassing the rights of way claimed by, this action.

6. Defendant U.S. Forest Service (“USFS”) is a federal agency within the U.S. Department of Agriculture. It administers certain federal lands traversed and bordered by the roads at issue in, and encompassing the rights of way claimed by, this action.

7. Defendant Montana Fish, Wildlife & Parks (“FWP”) is a Montana state administrative agency. It administers certain state lands traversed and bordered by the roads at issue in, and encompassing the rights of way claimed by, this action.

8. Defendant Montana Department of Natural Resources & Conservation (“DNRC”) is a Montana state administrative agency. It administers certain state lands traversed and bordered by the roads at issue in, and encompassing the rights of way claimed by, this action.

9. Defendant Madison County Commission (“Madison County”) is a three-member administrative board charged with administering the

affairs of Madison County, Montana, including the creation, recognition, maintenance, alteration, improvement and abandonment of county roads, inclusive of the roads at issue in this action.

10. Defendant Imerys Talc America, Inc., f/k/a Luzenac America, Inc. (“Imerys”) is a Delaware corporation that owns a talc mine in the area of the disputed roads. A small portion of the roads at issue in this matter, as they currently lie, crosses land owned by Imerys.

11. Defendant Walsh Eugene Carter Bypass Trust (“Wash”) is a private landowner. A small portion of the roads at issue in this matter cross land owned by Walsh. Upon information and belief, the Walsh family agrees that the roads in question are county roads.

JURISDICTION AND VENUE

12. The Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 2409(a), 1331, 1346(f), and/or § 2201.

13. The Court has supplemental jurisdiction over related matters of Montana state law under 28 U.S.C. § 1367(a).

14. The Court has personal jurisdiction over all of the parties.

15. Venue is proper under 28 U.S.C. § 1391(b)(2) and (e) and District Court Local Rule 3.2(b) because the property that is the subject of this

action is located in Madison County, Montana.

FACTS RELEVANT TO ALL COUNTS

16. Bar K owns certain real property located on the west side of the Madison River, south of Ennis, Montana, which is commonly referred to as the “Bar K Ranch” or the “Kelly Ranch” (hereinafter the “Ranch”) and legally described as:

S12, T10S, R01W, ACRES 640, ALL;

S13, T10S, R01W, ACRES 640, ALL;

S24, T10S, R01W, ACRES 640, ALL;

S25, T10S, R01W, ACRES 240, N2NE4, NW4;

S30, T10S, R01E, ACRES 603, ALL LESS NE4NE4; and

S31, T10S, R01E, ACRES 360, NW4NE4, E2NW4,
GVT LT 1, NE4SW4, SE4.

17. Upon information and belief, most of the property comprising the Ranch was settled in the early 1900’s by Ben Lockhart. Additional land was acquired and incorporated into the Ranch over time.

18. Upon information and belief, Lockhart sold the Ranch to the Klatt family on or about March 8, 1946.

19. Klatts sold the Ranch to Andrew “Andy” and Susanna Kelly on or about April 10, 1958 and it has remained in the Kelly family ever since.

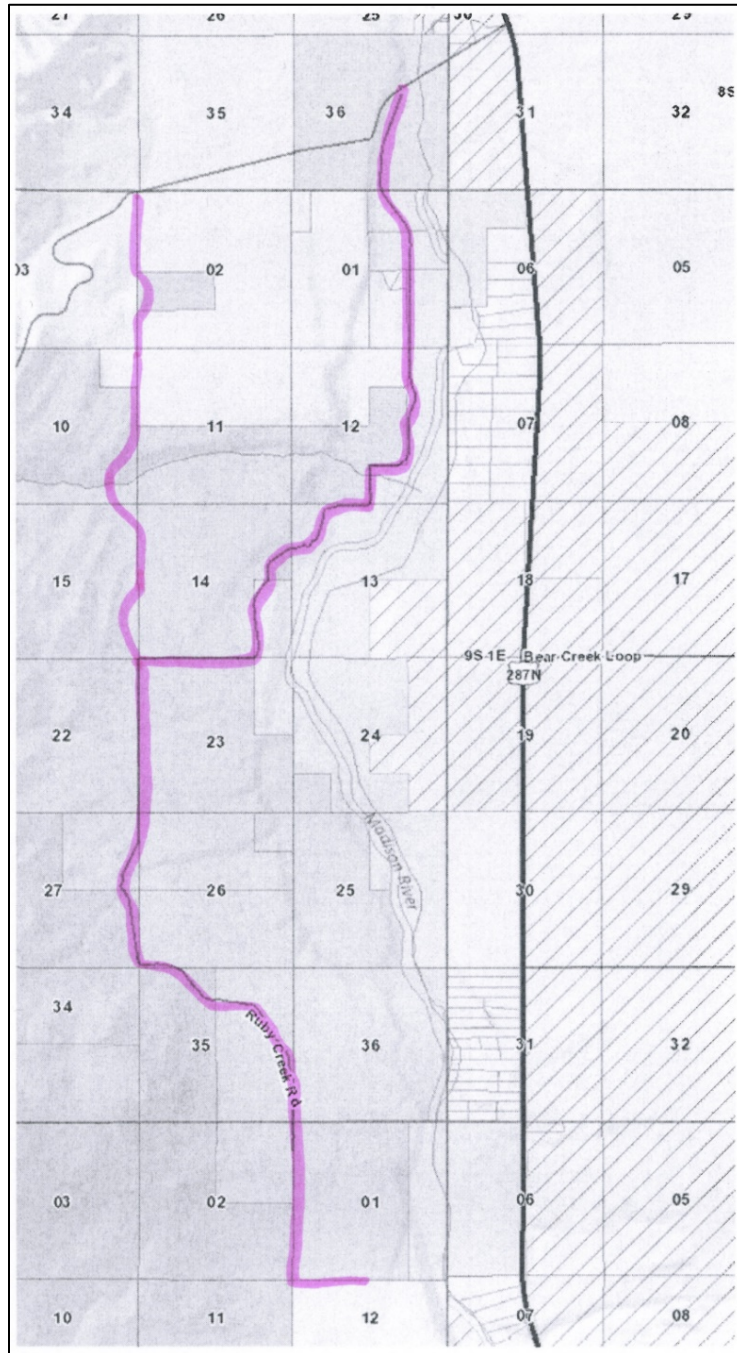
20. On or about September 21, 2012, Kellys caused the Ranch to be transferred to Bar K, a family-owned LLC which now holds legal title.

21. The Ranch is accessible from the north by a network of roads consisting of historical homestead access routes and county roads which have been used by local residents (including the owners of the Ranch and their employees, guests and invitees) and the public at large for more than a century.

22. The precise location, arrangement and designations attached to some of the roads have changed over the years. Portions of the roads have been referred to by various names and designations including, among other things: County Road # 36; County Road # 233; Ruby Creek Road; Wall Creek Road; Ennis-Wall Creek Road; Ennis-Varney-Wall Creek Road; South Wall Creek Game Range Road; Horse Creek Canyon Extension; and colloquially the “Upper” and “Lower” Roads (referring to the western and eastern principal roads, respectively).

23. The overlapping “Upper” and “Lower” Roads that are the principal arteries of the road system are approximately depicted below (in pink), as they currently lie, beginning from their intersection with Johnny Ridge Road, after it crosses the Madison River at McAtee Bridge, and

ending to the South at the entrance to the Ranch:



24. The Lower Road (i.e. the eastern road) along the Madison River is improved and regularly maintained. Portions of the Upper Road (i.e. the western road), where it diverges from the Lower Road, have not been

regularly maintained in recent years and have been rendered impassable because the bridge across Ruby Creek in S10, T09S, R01W has washed out and has not yet been replaced.

25. Upon information and belief, Madison County has had or shared responsibility for maintenance and improvement of these roads, and related infrastructure like Ruby Creek bridge, at all relevant times.

26. Until the late 1950s, these roads provided exclusive access for the Ranch, other local landowners, and for the public for many purposes including all vehicular access. Very limited alternative personal access was available at times via a foot-bridge and later a cable-car across the river, both located further upstream. At all times, these roads have provided primary or exclusive access for many purposes.

27. Additionally, at all times, the roads have provided meaningful and exclusive access to public lands, including access to substantial swathes of the Beaverhead-Deerlodge National Forest for hunting, fishing, hiking, camping, wildlife viewing, access to Forest Service cabins, and other personal and recreational uses by the people of Montana.

28. A road running from Ennis “up the west side of the Madison River” to the Ranch was declared a county road by the Madison County

Commission on June 7, 1888 (Comm. J. M/239–240), Exhibit 1 hereto.

The road was then opened by order of the Madison County Commission on December 10, 1888 (Comm. J. M/288–289), Exhibit 2. It is therefore a Montana public highway per Mont. Code Ann. § 60-1-201(c).

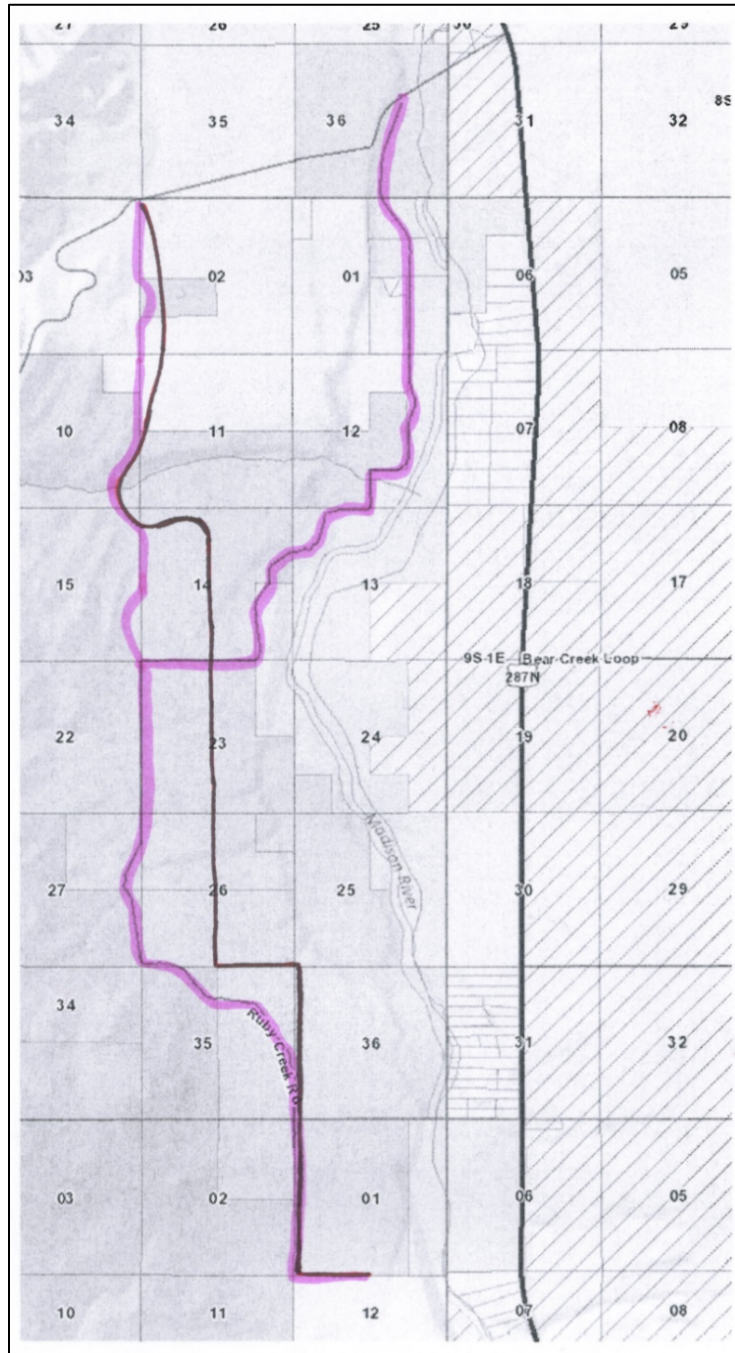
29. Upon information and belief, the viewer's report and maps showing the precise location of the original 1888 county road were not preserved and are not in the custody of the Madison County Commission or the office of the Madison County Clerk and Recorder.

30. However, various other county records identify the county road established in 1888 as the Lower Road, including county maps, road data sheets, and other administrative records.

31. The Upper Road was established as an alteration and extension of an undescribed pre-existing county road by operation of road petition B18 dated October 1912, Exhibit 3. Petition B18 was approved, and the Upper Road was declared a county road, by order of the Madison County Commission on June 6, 1913 (Comm. J. T/166), Exhibit 4. It is therefore a Montana public highway per Mont. Code Ann. § 60-1-201(c).

32. The original right of way for the Upper Road, as described by the viewer's report for the 1913 petition, is approximately depicted below in

black, with the roads as they currently lie again depicted in pink.



33. As recently as 1983, the State of Montana (acting through FWP) and the Walsh family (predecessors in interest to the Walsh Eugene Carter Bypass Trust), owners of land traversed by portions of the Upper

Road, recognized the public's right of way and made efforts to solidify it by granting easements to the County for "purposes of a public roadway."

34. Both the Upper and Lower Roads are depicted as county roads and/or public highways on various official maps and Madison County records about the roads under its administrative purview.

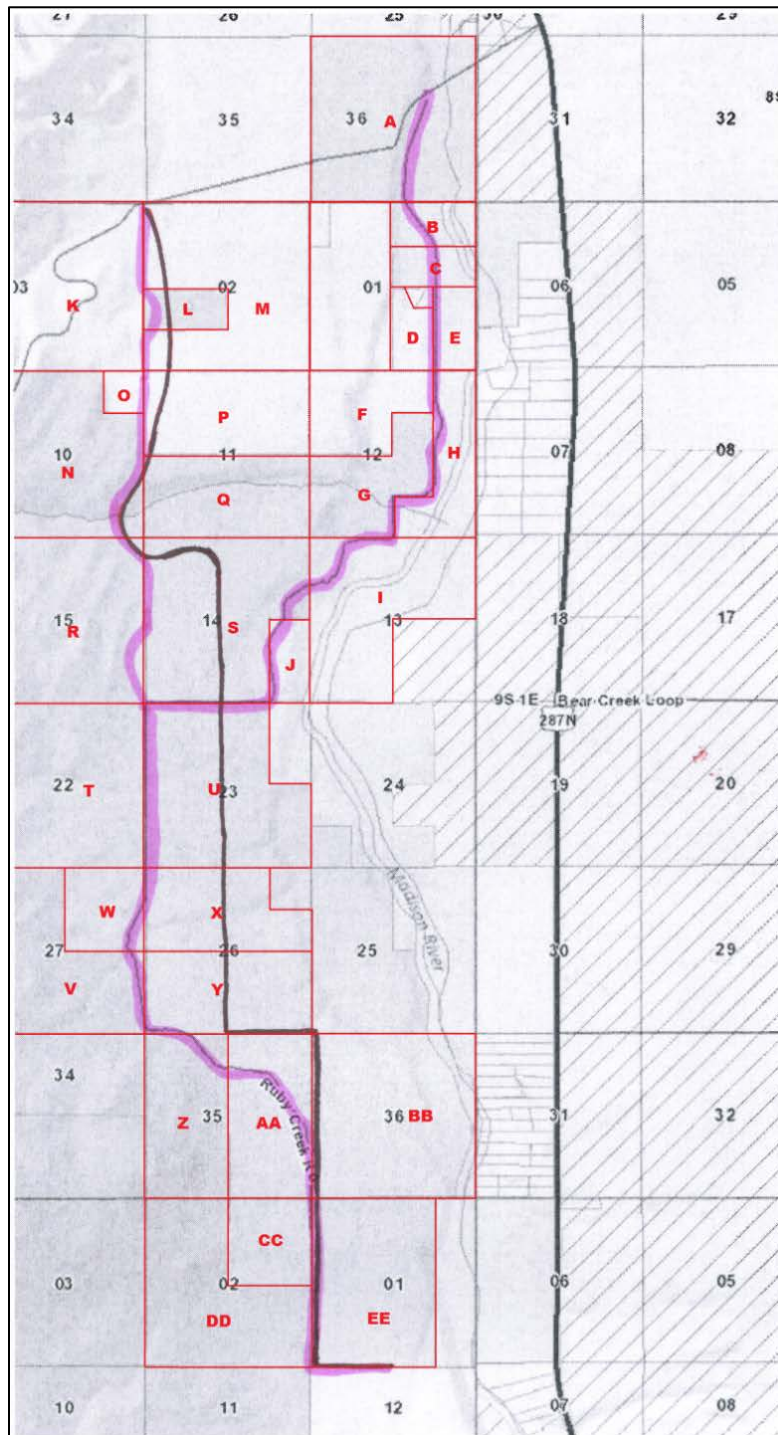
35. The parcels of real property traversed and/or bordered by the roads are legally described as follows:

- A. S36, T08S, R01W, ACRES 651, ALL;
- B. S01, T09S, R01W, ACRES 89, N2NE4 EAST OF RIVER;
- C. S01, T09S, R01W, ACRES 78, LTS 6-7, SW4NE4;
- D. S01, T09S, R01W, C.O.S. 7/1744-FC, REMAINDER TR
- E. S01, T09S, R01W, ACRES 87, E2SE4;
- F. S12, T09S, R01W, ACRES 200, NW4NE4, NW4
- G. S12, T09S, R01W, ACRES 240, SW4NE4, SW4, NW4SE4;
- H. S12, T09S, R01W, ACRES 209, E2E2, SW4SE4;
- I. S13, T09S, R01 W, ACRES 485, N2, SW4;
- J. S14, T09S, R01 W, ACRES 81, E2SE4;
- K. S03, T09S, R01W, ACRES 657, ALL LESS R/W;
- L. S02 T09S, R01W, ACRES 80, N2SW4;

- M. S02, T09S, R01W, ACRES 576, N2, S2SW4, SE4;
- N. S10, T09S, R01W, ACRES 600, ALL LESS NE4NE4
- O. S10, T09S, R01W, ACRES 40, NE4NE4;
- P. S11, T09S, R01 W, ACRES 320, N2;
- Q. S11, T09S, R01 W, ACRES 320, S2;
- R. S15, T09 S, R01 W, ACRES 640, ALL
- S. S14, T09S, R01 W, ACRES 560, ALL LESS E2SE4;
- T. S22, T09S, R01W, ACRES 640, ALL LESS HWY
- U. S23, T09S, R01W, ACRES 560, W2NE4, W2, SE4;
- V. S27, T09S, R01W, ACRES 481, S2, NW4;
- W. S27, T09S, R01W, ACRES 160, NE4;
- X. S26, T09S, R01W ACRES 279, N2 LESS NE4NE4 LESS HWY;
- Y. S26, T09S, R01W, ACRES 320, S2;
- Z. S35, T09S, R01W, ACRES 321, W2;
- AA. S35, T09S, R01W, ACRES 320, E2;
- BB. S36, T09S, R01W, ACRES 639.574, ALL;
- CC. S02, T10S, R01W, ACRES 160, H.E.S. #797;
- DD. S02, T10S, R01W, ACRES 481, S2, NW4 LESS H.E.S. #797, MINUS H.E.S. #97;

EE. S01, T10S, R01W, ACRES 494, W2E2, W2;

36. These potentially affected parcels of real property are depicted below, labeled to correspond to the preceding list of legal descriptions:



37. Parcels A and BB are state trust lands administered by DNRC

38. Parcels B, C, E, H, I and J are federal lands administered by BLM.

39. Parcels V, Z, and DD are federal lands administered by USFS.

40. Parcels D, F, G, L, N, O, P, Q, R, S, T, U, W, X, Y, AA, CC, and EE are state lands administered by FWP, which comprise part of the Wall Creek Game Range.

41. Parcel K is owned by Imerys. A small part of the Upper Road, as it currently lies, crosses this parcel, though the original road and the right of way as described in 1913 did not.

42. Parcel M is owned by Walsh. A small part of the original declared county road, and the road as it currently lies, cross this parcel.

43. The northern portion of the Lower Road near Johnny Ridge Road, as it currently lies (hereinafter the “BLM Segment”), deviates from the path of the original county road, which ran approximately through the center of Sections 1 and 12 of T09S, R01W, across Parcels A, B, C, D, F, G, and H.

44. The original county road across these Parcels remains visible in aerial photographs and satellite imagery and is approximately depicted

below (shown in orange), alongside the relevant portion of the Lower Road, as it currently lies, encompassing the BLM Segment (in pink):



45. Upon information and belief, in the mid-to-late 1960s, the new road comprising the BLM Segment (shown above in “pink”) was constructed to facilitate better public access to the Ruby Creek Campground, located along the Madison River at the southern end of Parcel H.

46. On or about May 5, 1969, area residents filed Madison County road petition E57, Exhibit 5, asking the County to abandon a portion of the original county road “effective upon completion of the United States Government road substituting therefore...by reason of the fact that a United States Government road is to be built between this road and the Madison River and will replace the road sought to be abandoned.”

47. As shown on Exhibit 6 (Comm. J. 3/236), a portion of the original county road was thus abandoned on or about July 8, 1969, ranging from the intersection with Johnny Ridge Road in Parcel A down to the “South line of the North half of Section 12,” the approximate center point of Section 12 between Parcels F and G, “subject to completion” of the new road and with the understanding, as published in the statutorily-required newspaper notice, that the original public access route would be replaced by the “substitute road.”

48. Thereafter, county road data sheets and other administrative records continued to reflect the county's belief and understanding that the above-depicted portion of the original county road was abandoned due to the existence of substitute access. For example, Exhibit 7, a County road data sheet for "Ennis-Wall Creek Road," describes the declared 1888 county road running from Ennis to the Ranch and notes that a portion of the road was abandoned and "replaced" in 1969.

49. Certain other portions of the 1888 county road encompassing the Lower Road were abandoned over the years, including a portion of the road on the Bark K Ranch itself in 1964, and another portion, further to the north of the areas depicted in the preceding maps, across the Bar Seven Ranch in approximately 1977.

50. Other than these abandonments, and the purported abandonment of a portion of the original county road subject to completion of the replacement BLM Segment, as described above, no part of any private or public right of way over the roads depicted herein has ever been abandoned, vacated or relinquished.

51. For much of the twentieth century, a substantial portion of the land traversed by these roads was privately owned, including by

original homesteaders and their successors-in-interest, and/or by the Northern Pacific Railway Company. Over time, much of the once privately-owned property was acquired by the government, principally including FWP, which has dedicated the land to the creation and expansion of the Wall Creek Game Range.

52. Other lands in the area went unclaimed by homesteaders and were not dedicated to any particular public use, and therefore fell to the management and administration of the U.S. General Land Office (“GLO”) before passing to the BLM upon its creation in 1946.

53. In recent years, the various state and federal agencies with responsibility for administering these lands have begun to restrict access and dictate the use of the roads in ways inconsistent with their status as county roads and Montana public highways, and otherwise inconsistent with established private and public access rights. Said entities have further denied that portions of the roads in question are county roads, explicitly and implicitly giving rise to an actual controversy regarding the ownership and control of the roads and the location and status of attendant rights of way.

54. There is no other adequate remedy at law, requiring resolution by

this Court under the Quiet Title Act and/or by entering appropriate declaratory relief under relevant provisions of federal and state law.

COUNT I: QUIET TITLE/DECLARATORY JUDGMENT
(the Original County Roads are county roads/public highways)

55. Plaintiff incorporates the foregoing facts and allegations as if set forth fully herein.

56. The Upper and Lower roads described above (hereinafter referred to collectively as the “Original County Roads”) were principally constructed in the late nineteenth and early twentieth centuries and were established as county roads by express declaration and dedication under the procedures prescribed by Montana law, including but not limited to declarations of the Madison County Commission on June 7, 1888 and June 6, 1913.

57. Montana counties are charged by law to maintain records of all openings and alterations of county roads. Mont. Code. Ann. § 7-14-2614. Given the age of the roads in question and the incompleteness and imprecision of the records maintained by Madison County, particularly including the unavailability of records depicting the original location of the county road from Ennis to the Bar K Ranch as established in 1888, the *Reid* doctrine applies. Under *Reid. v. Park County*, 192 Mont. 231,

627 P.3d 1210 (Mont. 1981), the Court may determine whether public roads exist based upon “the record taken as a whole,” even if the historical record is incomplete or otherwise insufficient to prove strict adherence to the statutory prescriptions for creation of public roads under Montana law. In other words, the law recognizes the “inherent difficulty of recreating events from incomplete or cryptic public records...” about a road “created when horse-and-buggies were more prevalent than Ford Explorers[,]” and adjusts the petitioner’s burden of proof accordingly in disputes about historic public roads. *Garrison v. Lincoln Cnty.*, 2003 MT 227, ¶¶ 14–16, 317 Mont. 190, 77 P.3d 163.

58. Moreover, any discrepancies in the location or description of the roads, including but not limited to any actual or alleged deviations from the descriptions in the original road declarations and viewer’s reports, are “insufficient to destroy the road’s public status.” *Garrison*, ¶ 21.

59. Any defects regarding the creation or dedication of the Original County Roads are also ameliorated by operation of Montana’s “curative statute” (enacted as § 2600 of the Montana Political Code of 1895, later re-codified as RCM § 32-103 (1947)), which expressly recognized as public highways “[a]ll highways, roads, lanes, streets, alleys, courts,

places and bridges laid out or erected by the public, or now traveled or used by the public, or if laid out or erected by others, dedicated or abandoned to the public, or made such by the partition of real property....”).

60. To the extent any portion of the Original County Roads is not deemed a county road by virtue of a valid express declaration, then the public has alternatively secured an equivalent right of way by operation of the other mechanisms specified by the curative statute and Mont. Code. Ann. § 60-1-201(3), including but not limited to by the construction, maintenance, and alteration of the roads by the County with public funds, and expansive and enduring historic use of the roads by the public at all relevant times.

61. Upon information and belief, the Original County Roads are comprised of old homestead routes that have been abandoned to the public together with roads built and improved by the County for the benefit and use of the public.

62. At all relevant times, the Original County Roads have been overseen and maintained, in whole or in part, by Madison County and public funds have been expended for the maintenance and improvement

of the roads, bridges, and other infrastructure in service of the public's right of way.

63. Bar K, the public, and the County have consistently treated the Original County Roads as county roads and Montana public highways, common to all of the people, during all phases of the roads' history and transcending any alterations of their course by the passage of time or the effects of road maintenance and administrative alteration. The roads have been used freely and regularly, at all times, for expansive and enduring purposes such as ingress and egress to public and private lands for personal, recreational, commercial and agricultural uses.

64. As to any portion of the Original County Roads which are not deemed to be county roads and/or public highways for one or more of the reasons stated above, the public's historical use has additionally established a public prescriptive easement. The public's historical use of the roads has been open, notorious, exclusive, adverse, uninterrupted and in excess of the statutorily prescribed period.

65. The purported abandonment of the portion of the Original County Road running parallel to the BLM Segment in Parcels A, B, C, D, F, G, and H, as described in Paragraphs 43–44 above, was ineffectual. That

road was closed by operation of a county road closure petition, held out to the public as being “effective upon” and “subject to” the establishment of a “substitute” public access route, which the affected landowner, the United States of America (acting through BLM) now denies exists.

66. To the extent the public is without lawful access across the BLM Segment (as claimed by Count II, *infra*), affording equivalent or superior access to a county road, the conditional abandonment of this portion of the Original County Road in 1969 is invalid for reasons including but not limited to: failure to provide adequate public notice of the nature, scope and purpose of the proposed abandonment; other failures to substantially comply with statutory mandates governing abandonment of county roads; and because the road was never “abandoned” at all because the road closure petition was expressly conditional and the resulting declaration did not express an unequivocal intention to not “reclaim or use [the road] again” as required to effect an abandonment of a county road under Montana law.

67. As to any portions of the Original County Roads which were established over then-federal lands, the public’s right of way is valid

under U.S. Revised Statute § 2477 of 1866 (“R.S. 2477,” later re-codified as 43 U.S.C. § 932 (1938)), through which the U.S. Federal Government granted rights of way over federal lands for the construction of public highways in order to facilitate and encourage the settlement and development of the American West.

68. R.S. 2477 grants were self-executing and afforded each state the authority to dictate the terms of its own acceptance. The grant “becomes effective upon the construction or establishing of highways, in accordance with state law” without any formal application by the state nor any action at all on the part of the federal government. 43 C.F.R. § 244.55 (1939 and 1963); 43 C.F.R. §§ 2822.1–2 and 2822.2–1 (1974).

69. According to BLM’s interpretation of R.S. 2477, “[w]hen public funds have been spent on the road it shall be considered a public road. When the history of the road is unknown or questionable, its existence in a condition suitable for public use is evidence that construction sufficient to cause a grant under R.S. 2477 has taken place.” BLM Manual R.2-229 (1986).

70. R.S. 2477 was repealed in 1976, subject to certain savings provisions that preserved any “valid existing rights” established by

operation of R.S. 2477 prior to its repeal.

71. As to any affected portions of the Original County Roads, the R.S. 2477 grant was expressly accepted by affirmative acts of the state and local governments, prior to any dedication to public use and prior to the repeal of R.S. 2477, including but not limited to: by the construction, maintenance and improvement of the roads; by the expenditure of public funds for such purposes; by the promulgation of the above-described Madison County road declarations and dedications; by operation of § 2600 and RCM § 32-103; and by the public's expansive and enduring historical use.

72. As to any affected lands acquired by any person or entity after the establishment of the Original County Roads, the public's right of way ran with the land and any such property was acquired subject to the public's established rights.

73. None of the access rights claimed hereby have ever been effectively relinquished, vacated, or abandoned.

74. Relief is required to settle the existence and location of the county roads in question, for reasons including but not limited to: actual disputes with affected landowners about the existence and scope of

public access rights; uncertainty created by historical alterations to the county roads; inadequate surveys and other descriptive records; and because portions of the roads as-traveled do not conform to the available descriptions of the Original County Roads as declared. *See* Mont. Code. Ann. § 7-14-2622.

75. Plaintiff, on behalf of itself and the people of Montana, is entitled to relief quieting title or other appropriate declaratory relief clarifying the nature and scope of the public's right of way over the Original County Roads. Appropriate and necessary relief includes, but is not limited to, declarations establishing that the purported abandonment of a portion of the Lower Road in 1969 is invalid and that the Original County Roads are, in fact, county roads and/or public highways of the state of Montana, or else are subject to an equivalent public easement and open to all lawful public use

**COUNT II: QUIET TITLE/DECLARATORY JUDGMENT
(the BLM Segment is a county road/public highway)**

76. Plaintiff incorporates the foregoing facts and allegations as if set forth fully herein.

77. The BLM Segment, as described in Paragraph 43 and depicted in pink in Paragraph 44 above, was constructed in the mid-to-late 1960's

to replace the historical county road and public right of way that followed a similar route across Parcels A, B, C, D, F, G, and H.

78. Upon information and belief, and as indicated by Madison County road data sheets, the BLM Segment was constructed as part of the federal-aid secondary highway system. *See Exhibit 7*. It therefore was and remains a public highway as defined by Mont. Code. Ann. § 60-1-201(a) and its predecessor statutes. By promulgating a definition of “public highway” that includes federal-aid highways, the State of Montana expressly accepted the federal government’s R.S. 2477 grant as to the BLM Segment prior to the repeal of R.S. 2477, rendering it a public highway open to all lawful use.

79. In addition to or in the alternative to the grounds set forth in the preceding paragraph, the R.S. 2477 grant as to the BLM Segment was accepted by affirmative acts of the state and local government, including but not limited to the involvement of Madison County in maintaining and improving the road for years prior to the repeal of RS 2477 and thereafter, and by the expenditure of public funds for maintenance and improvement of the road, rendering the BLM Segment a county road and a public highway open to all lawful use

pursuant to Mont. Code. Ann. § 60-1-201(3) and otherwise by operation of Montana law.

80. In addition to or in the alternative to the grounds set forth in the preceding two paragraphs, the R.S. 2477 grant as to the BLM Segment was accepted by customary and historic public use in excess of the statutorily prescribed period and prior to the repeal of R.S. 2477, including expansive and enduring public uses for all lawful purposes, such as ingress and egress to public and private lands for personal, recreational, commercial, and agricultural uses, thereby establishing a public right of way for all past and foreseeable future uses.

81. None of the access rights claimed hereby have never been effectively relinquished, vacated, or abandoned.

82. Plaintiff, on behalf of itself and the people of Montana, is entitled to relief quieting title, or other appropriate declaratory relief, clarifying the nature and scope of the public's right of way over the BLM Segment of the road. Appropriate and necessary relief includes, but is not limited to, a declaration establishing that the BLM Segment is a county road and/or public highway of the State of Montana, or else is subject to an equivalent public easement and open to all lawful public use

COUNT III: QUIET TITLE/DECLARATORY JUDGMENT
(location of public rights of way)

83. Plaintiff incorporates the foregoing facts and allegations as if set forth fully herein.

84. The precise original location of some of the declared county roads described herein are presently unknown, for lack of a sufficient record of actions known to have been taken by the Madison County Commission more than a century ago.

85. The location of some of the county roads at issue has, in some cases, also changed over time for reasons including but not limited to the effects of road maintenance (i.e. gradual changes due to years of grading and course alterations to serve the ends of convenient maintenance and use) and deliberate decisions by Madison County and the servient landowners to improve the roads, facilitate better access, and address problems created by weather, erosion, and topography.

86. To the extent any portion of any public right of way over any of the roads described herein, as they currently lie, might be obstructed or defeated by the fact that the physical road has deviated from the declared or otherwise-established public right of way, notwithstanding the *Garrison* doctrine (discrepancies in location or description are

“insufficient to destroy [a] road’s public status”), declaratory relief is necessary and appropriate to establish the proper course of the right of way and effectuate public access.

COUNT IV: INJUNCTIVE RELIEF
(ensuring viable public access)

87. Plaintiff incorporates the foregoing facts and allegations as if set forth fully herein.

88. To the extent the Court determines that the public right of way and the physical roadways have deviated, and substitute access cannot be secured over an existing improved and maintained road, affirmative injunctive relief is necessary and appropriate to compel the responsible parties to relocate any such roads so as to afford public access consistent with established rights, or otherwise reasonably improve and/or maintain the roads where the public’s right of way lies.

89. To the extent the Upper Road is determined to be the only extant county road and/or public highway, or else provides the only equivalent public access, affirmative injunctive relief is also necessary and appropriate to compel Madison County, and/or other responsible parties, to maintain and improve the road so as to reasonably effectuate the public’s right of way, including but not limited to replacing the

washed-out bridge across Ruby Creek.

90. To the extent any such county roads are obstructed by fences, gates, or other interference that is at odds with Montana law governing access to and use of county roads and public highways, injunctive relief is also necessary and appropriate to compel the responsible parties to remove such obstructions and impediments to the public's lawful access.

91. Plaintiff is entitled to such relief pursuant to Mont. Code. Ann. § 27-19-102, the supplemental relief provisions of the federal and state Declaratory Judgment Acts, and as may otherwise be authorized by state or federal law.

**COUNT V: QUIET TITLE/DECLARATORY JUDGMENT
(Bar K's private right of way)**

92. Plaintiff incorporates the foregoing facts and allegations as if set forth fully herein.

93. In addition to or in the alternative to the public rights of way described herein, Bar K has established private prescriptive easements across the roads, or relevant portions thereof, by qualifying adverse use by Bar K or its predecessors in interest for the statutorily prescribed period, prior to acquisition of any such lands by the state or federal government or dedication to any particular public use.

94. All such prescriptive rights were established by expansive and enduring private uses for all lawful purposes, including unrestricted ingress and egress to the Ranch and adjacent public lands and other personal, recreational, commercial, and agricultural uses by the owners of the Ranch, their guests, employees and invitees.

95. No such access rights have ever been effectively vacated, relinquished, or abandoned in any way.

96. All such rights, once established, ran with the land and the current owners acquired the affected properties subject to the established access rights of the original owners of the Ranch and their successors in interest, including Bar K.

97. Plaintiff is entitled to relief quieting title, or other appropriate declaratory relief, clarifying the nature and scope of Bar K's private access rights.

**COUNT VII: DECLARATORY JUDGMENT
(supplemental relief and attorney's fees)**

98. Plaintiff incorporates the foregoing facts and allegations as if set forth fully herein.

99. Plaintiff Bar K is entitled to an award of attorneys' fees and costs incurred in this matter pursuant to the cost-shifting and supplemental

relief provisions of the Montana Uniform Declaratory Judgments Act (Mont. Code. Ann. § 27-8-311 and 313), the “further relief” provisions of the Federal Declaratory Judgment Act (28 U.S.C. § 2202), the private attorney general doctrine, and as may otherwise be available under federal or Montana law.

100. Plaintiff Bar K is further entitled to any other supplemental relief that the Court may deem necessary and proper to achieve a just and equitable result.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Bar K Ranch, LLC, prays for relief for itself and the people of Montana, including but not limited to:

1. Declaratory relief recognizing, locating and affirming any county roads, public highways, or other public rights of way across the lands described above or otherwise connecting Johnny Ridge Road to the Bar K Ranch and adjacent public lands, and quieting title accordingly, thereby establishing a perpetual public right of way for all lawful purposes and with all other rights attendant thereto;
2. Declaratory relief establishing any private rights of way across the lands described above or otherwise connecting Johnny Ridge Road to

the Bar K Ranch, and quieting title accordingly, consistent with the broad, unrestricted historical use of the roads by Bar K and its predecessors in interest for more than a century, which shall be appurtenant to the Ranch property, run with the land, and inure to the benefit of Bar K's successors in interest;

3. Further declaratory or injunctive relief as may be necessary to effectuate any public or private access rights the Court may recognize, including but not limited to affirmative injunctive relief requiring the responsible parties to remove obstructions, relocate certain roads and/or replace, improve and maintain the roads and bridges at issue;

4. An award of attorney's fees and costs under 28 U.S.C. §§ 2202, Mont. Code. Ann. § 27-8-311 and 313, and/or the private attorney general doctrine; and

5. Any other and further relief the Court deems just and equitable.

DATED this 29th day of January, 2019.

GOETZ, BALDWIN & GEDDES, P. C.,
Attorneys for the Plaintiff



By: _____
J. Devlan Geddes
Jeffrey J. Tierney

Commissioners' Journal "M," Madison County, Montana.

Regular June

Session, Thursday June 7

A. D. 1888

Printed, Lithographers and Stationers, St. Louis.

May 1888 Session of the District Court, wherein said Grand Jurors were not allowed payment for the services they were so detained, and that the sum of three dollars was due to each said Grand Juror, on account of such service, in connection with the fact that payment was made to said Grand Jurors, by warrant issued on the General Fund, as follows:

12424	A. Ellinghaus,	3.00	
12425	C. A. Beckner,	3.00	
12426	S. B. Hunt	3.00	
12427	A. P. Drags,	3.00	
12428	H. F. McCormack	3.00	
12429	Mc D. Jeffers,	3.00	
12430	C. Damitz	3.00	
12431	B. A. Mansbach	3.00	
12432	C. B. Varnum,	3.00	
12433	H. J. Post	3.00	
12434	John Hanson	3.00	
12435	J. P. Gadschius	3.00	
12436	J. J. Rohls	3.00	
12437	John Pags,	3.00	
12438	A. R. Beck	3.00	45.00

In the matter of the Road petitioners for, running up the west side of the Madison river, beginning at a point known as Dry Hollow, at or near the South end of Ennis lane, between sections 8 and 9 of Twp 6 S. R. 1 W. and running in a southerly direction up the west side of the Madison river to a point at or near the mouth of Hall creek. The Report of the viewers S. A. Olney, H. N. Magyner, and E. E. Craig, duly appointed and qualified to view and establish said road, is hereby approved with the following change, or amendment:

EXHIBIT

1

tabbles

Commissioners' Journal "M," Madison County, Montana.

Regular June

Session,

Monday June 17th

A. D. 1888

Geo. D. Barnard & Co., Blank Book Manufacturers,

to wit: when the line of said road is located, enters the North side of the Creek claim of John R. Weston, now deceased, it shall continue thence in a due South course, a distance of about 200 rods to or near the North bank of a dry ravine; thence South east, along the North bank of said ravine, (a suitable distance therefrom to insure a good roadway) until the same shall intersect the line of the road located and reported by said viewers; the point where said road in its due South course reaches said dry ravine being about 20 rods North of the South line of said claim. It is further ordered that said Report, with the foregoing change and amendment, be entered upon the Road record of the County, and that said road as located and changed by this Board, be and the same is hereby declared a public County road. And it is further ordered that a warrant be issued to the Estate of said John R. Weston deceased, for the sum of \$200⁰⁰ as full payment for all damages assessed by said viewers.

R 7103 John R. Weston Exr. Damages assessed for locating road 2000.
 In the matter of the Petition for laying out a County road, beginning at a point at or near the Madison Springs, on the County road near the head of Daylight Gulch, thence upon and along what is commonly known as the English George Trail, to a point on Moran Creek, to intersect road running up west side of Madison river, -
 The Report of the viewers, L. R. Buford, Robert Hickers, and Wm. A. Cooley, duly qualified to view and locate said road, is hereby approved and accepted, and ordered spread in full upon the Road record of the County.
 And it is further ordered that said road -

Commissioners' Journal "M," Madison County, Montana

Regular December Session, Monday, December 10th 1888.

Geo. D. Bernard & Co., Blank Book Manufacturers.

Printed

Continued to the March 1889 Session

The undersigned, William Harris, J. H. Starns and C. R. Adams, appointed to view and locate certain county roads, petitioned for the vicinity of Sterling and Red Bluff, having failed to file their amended Report thereon, the said Petition and all matters and proceedings connected therewith are hereby disapproved, rejected and rescinded.

Board adjourned to 4 o'clock, P. M. of Tuesday the 11th instant.Regular December Session, Tuesday, December 11th 1888.

Board met pursuant to adjournment, all members present, and resumed consideration of matters pertaining to roads and highways.

On Motion, it is ordered that the Supervisor of Road Dist No. 12, post Notice as required by law, for the opening of the road, described as beginning at or near the Dry Hollow, on the 4th of this month's road, and running thence up the west side of the Madison River to, above, and as the same has been laid out and established by this board, giving Notice to all persons, as provided in Sec. 1815, of Road Laws that unless said road is duly opened within sixty days from the date of posting such Notice, that said Supervisor will proceed to open and improve said road, and said Road Supervisor is hereby ^{authorized} instructed to enforce and carry out the above directions and order of the Board.

EXHIBIT

2

tabbles

Commissioners' Journal "M," Madison County, Montana

Regular Session

Session, held on December 11th 1888

Printers, Lithographers and Stationers, St. Louis.

On line motion, it is ordered that the supervisor of Road District No. 16, past Notices as required by law for the opening of the road described as beginning on the Borup and Hallation circuit road and running thence to and by Roberts grist mill to the brow of the hill near Norwegian bridge built by Jno. H. Coon, as said road has been established and laid out by this Board; giving Notice to all persons (as provided in Sec 1518 of Road Laws) that unless said road is duly opened upon the line as established, within thirty days from the date of pasting said Notices, that said supervisor will proceed to open and run the same and said supervisor is hereby authorized to carry out the above order of this board.

The applications of E. S. Murphy, C.R. Cornforth and A. Armstrong ^{for state of Kansas for 1888} ~~for 1888~~ ^{after} ~~also~~ consideration disapproved and disallowed.

A Petition by certain of the residents of School District No. 14, praying for the establishment of a "Huntschool District," by a division of the said District No. 14, as follows,
Beginning at the point on the Madison river where the line between Townships 6th & 7th S. R. 1st W. crosses said river, thence East to the Eastern boundary of said District No. 14, thence South to the Madison river, thence west and North along the river to the place of beginning. Having been presented to the Board, with the endorsement of J. P. Mahoney, Superintendent of Public Schools, thereon; after due consideration, the said Petition was approved and

578

WEST COAST PETITIONER

Road on West Side of Main

Report filed *June 2* *1912*

Viewers appointed *June 5* *1912*

Report filed *June 11* *1912*

Order of hearing *June 11* *1912*

Report approved *June 16* *1912*

Order of survey *June 16* *1912*

Surveyor's report filed *June 16* *1912*

Declaratory County Road *June 16* *1912*

See Book *Current Surveyors' Proceedings*

Pages 166

Record Book *County Books* *1912*

County Clerk

THE IRWIN-HODSON CO. MANUFACTURING STATIONERS
PORTLAND OREGON

EXHIBIT

3

tabbles®

E18

PARTITION FOR CHANGE AND EXTENTION OF COUNTY ROAD.

Virginia City, Montana.

Sept. 2nd. 1912.

To the Honorable. The Board of County Commissioners of
Madison County, Montana.

Gentlemen;

We the Undersigned, free holders of Road District G
Madison County, Montana. and taxable therein for road purposes
do hereby petition the honorable Board of County Commissioners of
said County to make such changes as are noted on plats
accompanying this petition as fols; ~~discontinuing that portion of~~
~~the present road around Sec. 22 T. 8 S R 1 West. and running it on~~
~~the west line of Sec. 22 T. 8 S R 1 W. also the changing of the~~
T. 10 S R 1 W.
present course of the road thru Sec's 1, 12, 18 and 24 described as
nearly as possible on plat also the extention of the road across
Horse Creek Canon thru Sec. 19 T. 10 S R 1 East.

The land affected by the first change is owned by John Barriter
whose name is signed to this petition and who is agreeable to the
change

The land affected by the second is owned by Wm. Clark and Monty
Graham who are agreeable to the change

The land affected by the extention is owned by the N.P. RR
That the present road is in bad condition having had practically
no work done on it for years and as there is an increasin amount
of traffic on account of the number of new settlers coming into
this section this change and extention is asked

Respectfully submitted.

E. O. M. L.

VIEWS' REPORT

To the Honorable the Board of County Commissioners, Madison County, Montana:

We, the undersigned viewers, appointed by your honorable body at your regular

1912 session, to view, locate, and mark out a public county road from

15- 8 South 1 West to Sec 19- 10 South R 1 East - Mont Brn Mer

as described in the petition therefor, on file in the office of the county clerk of said County of Madison,

beg leave to report our action thereon as follows:

Having first been duly sworn to faithfully and impartially discharge the duties imposed by law, under said appointment, we repaired to the place, at the time appointed for viewing said road, and proceeded to locate and mark out said road, as petitioned for, upon what appeared to be the most practicable route therefor, upon the lines, in the directions and across the lands hereinafter particularly described, to wit:

Beginning at a point near Center of Sec 15 8 So- R 1 West - thence in a southerly direction to Sec 19- 10 So R-1 East as described on the attached plat which is made a part of this report -

This road can be constructed at small cost being a bench road the principal cost being on grade on south side of Ruby Creek and the making of two small culverts on bench south of Ruby Creek

STATE OF MONTANA,

County of Madison

ss.

and

being severally duly sworn, each for himself and not one for the other, deposes and says: That he

will faithfully and impartially discharge the duties as viewer of the road, described in the petition

therefor, to wit, beginning at a Point near center of Sec 15 Town

8 S. R 1 N thence in a southerly direction to

Sec 19 Town 10 South Range 1 East Mont Territory

under and by virtue of his appointment by the board of commissioners of said Madison county, at

and during a regular session of said board, held on the 5th day of Dec 1912

according to law and to the best of his understanding and ability.

John W. Kennedy

as a Lockhart

John W. Kennedy

18th John W. Kennedy this 18th

Subscribed and sworn to before me, by

day of April 1913

W. H. Thomas
Co. Clerk

NOTE—At least one of the viewers must be sworn before some officer authorized to administer oaths, after which he may swear the other viewers.

REPORT OF VIEWERS

Upon road petition for

EXAMINED, APPROVED & ORDERED

Filed JUN 6 1913

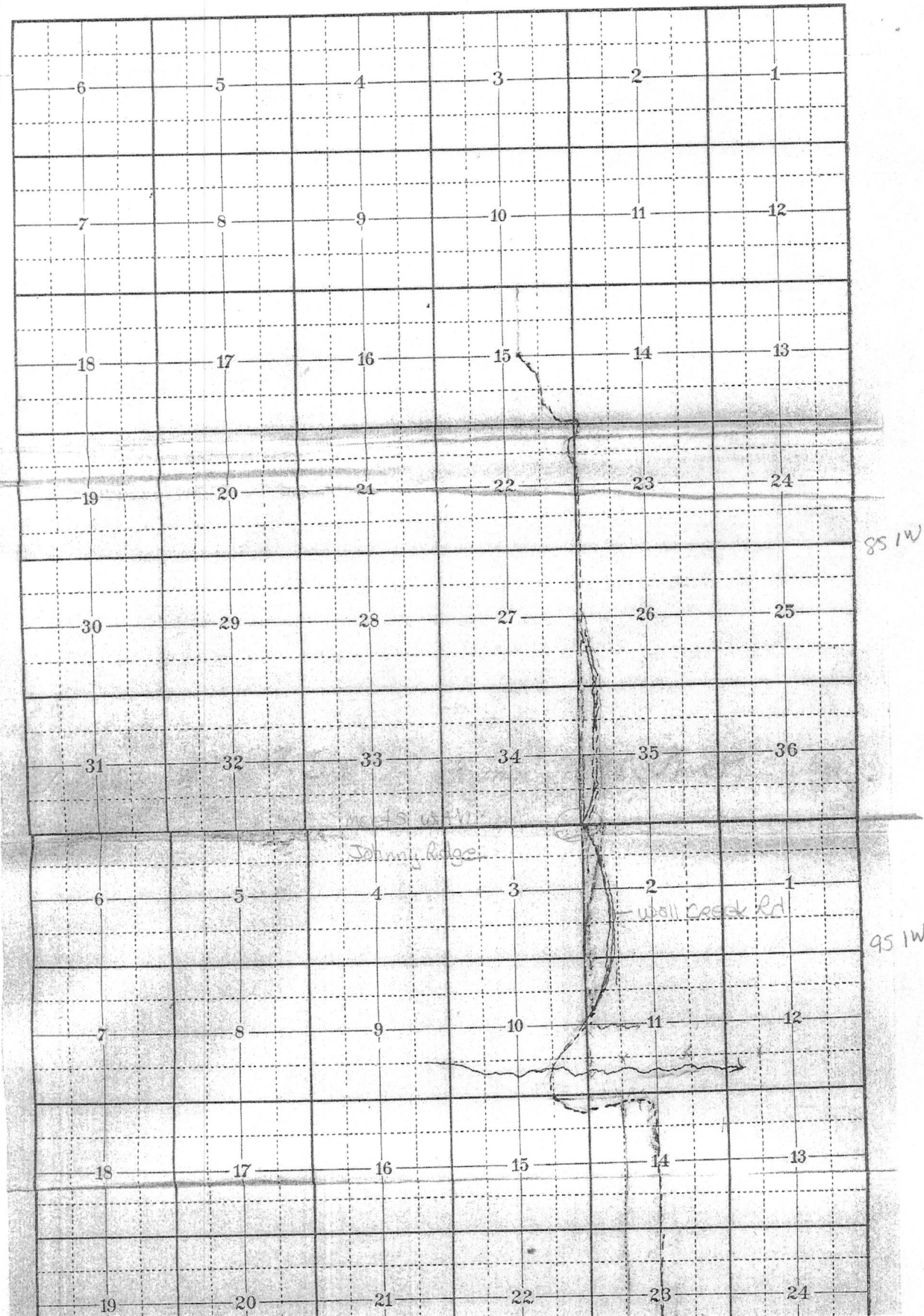
CHIEF CLERK OF COUNTY

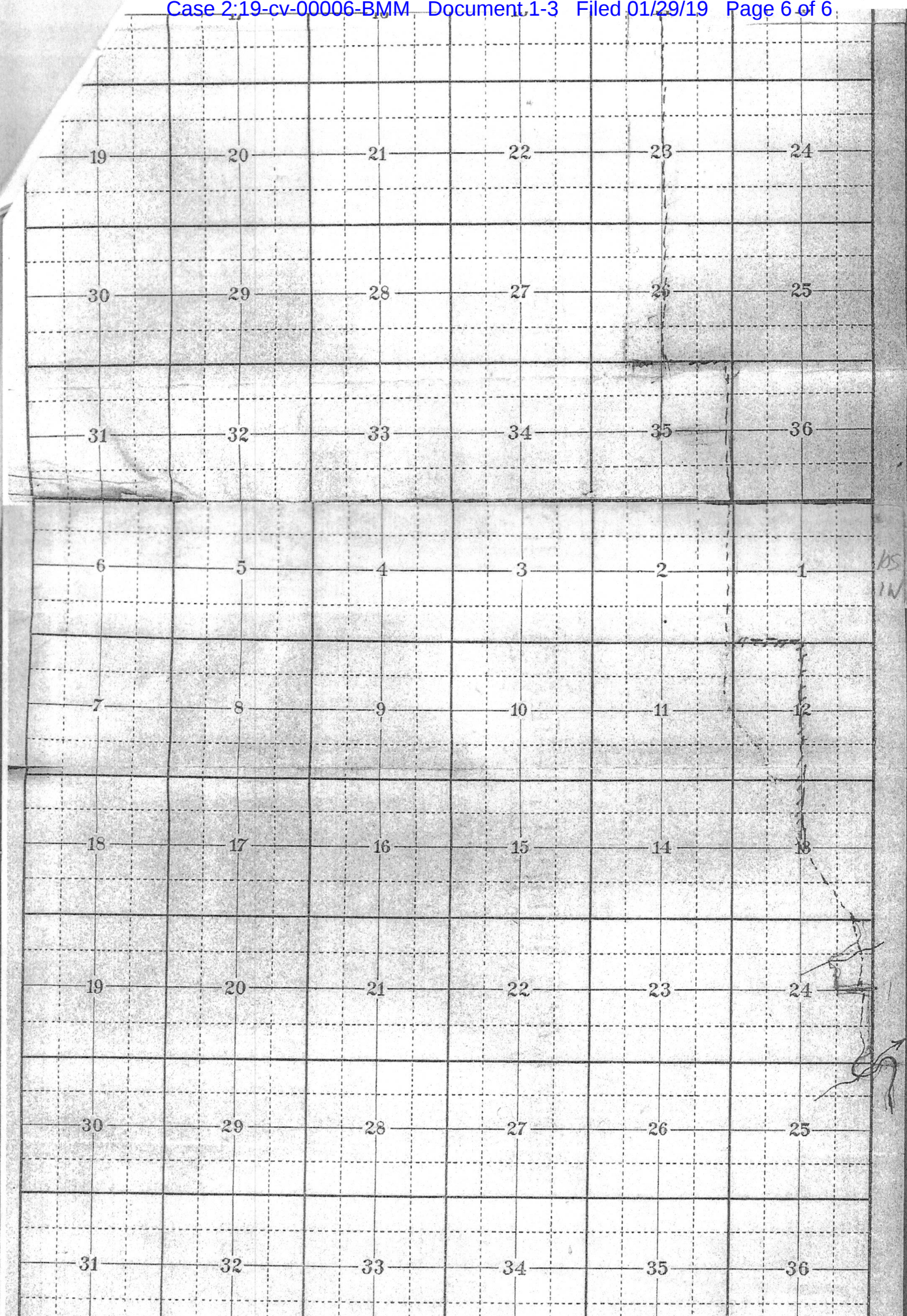
Filed June 4 1913

County Clerk

[4-590a]

Township No. 8 S Range No. 1 7th Mer.





166

Commissioner's Journal

Madison County, Montana

Session.

A. D., 191

road beginning at the N.E. Cor. of Sec. 13. T. 4 S. R. 7 W., and running directly south along the east line of section 13, for a distance of one mile, was on motion rejected, and the petition to maintain said road is hereby approved.

The Road petition of residents of the Ruby Valley as continued from previous Sessions to re-open and reconstruct and lay out as a public highway that certain road heretofore declared abandoned and being that particular road known as the lower road, lying along and through Sections 11-14 & 13.-T. 5. S. R. 5W., was examined and the following are appointed Road Viewers.

W. W. Payne.
J. F. Jenkins
Martin Johnson.

The petition of residents of the vicinity of South Boulder, praying for a County road commencing at the S.W. Cor. of Sec. 9. T. 1 S. R. 2 W., and running thence northerly across said section to a point on the east line thereof about $\frac{1}{4}$ mile north of the S.E. Cor. of said Sec. on the old South Boulder & Sappington road, was on motion rejected, the same not being in proper form.

The viewers reports on road, commencing at a point near the center of Section 15-T. 8. S. R. 1 W., thence running in a southerly direction to Sec. 19. T. 10 S. R. 1 E., was on motion approved and the same is hereby declared a County Road.

The petition of J. L. Swing et al asking for a County Road in the Ruby Valley, was rejected, the same not being in proper form.

On motion the sum of \$4072.47 was transferred from the General Road fund to the District Road fund as follows:

Road Dist. "1"	\$420.25
" "2"	471.10
" "3"	804.32
" "4"	719.37
" "5"	560.18
" "6"	376.25
" "7"	426.50
" "8"	129.50
" "9"	165.00
	<u>\$4072.47</u>

The following bills were then allowed on the Contingent Fund.

73. [1919] C. W. Chowning	\$108.00 ✓
74. [1919] Chas. Kyle	175.00 ✓
75. [1919] Bert G. Paige	98.00 ✓
	<u>\$381.00</u>

No further business appearing the Board adjourned.

Attest:

Clerk.

Chairman.

EXHIBIT

4

tabbles

CLOSURE MADISON RIVER WEST ^{E57}

#36

Petition E-57

APPROVED
JULY 8, 1969

Sec 36, 8S, 1W
closing Rd #36 to Sec. 12, 9S, 1W

LORRAINE P. MOLITOR
CLERK AND RECORDER, MADISON COUNTY
VIRGINIA CITY, MONTANA 59755

EXHIBIT

5

tabbles

PETITION OF EUGENE C. WALSH,
et al.,

TO CLOSE COUNTY ROAD ON
WESTERLY SIDE OF MADISON RIVER
THRU SECTIONS 1 AND 12, Twp. 9
S. R. 1 West.

Filed May 5, 1969

○ Notice of Hearing
published June 27-1969

Hearing on petition held
July 8-1969

Univ. Report
Received June 3-1969

○ Road declared
closed July 8-1969

P E T I T I O N

To the Board of County Commissioners of Madison County:

We, the undersigned, being ten or more of the freeholders of the Road District wherein the following described road is located do hereby petition the Board of County Commissioners of Madison County, Montana to abandon and discontinue a certain County road effective upon completion of the United States Government road substituting therefore, said road to be abandoned being described as follows:

That certain County road on the Westerly side of the Madison River, Madison County, Montana, commencing at Highway 327 (FAS Project No. 3-427) in Section 36, Township 8 South, Range 1 West, M.P.M. thence southerly approximately through the center of Sections 1 and 12, Township 9 South, Range 1 West, M.P.M. to the South line of Section 12, Township 9 South, Range 1 West M.P.M.

We petition for the closure of this road by reason of the fact that a United States Government road is to be built between this road and the Madison River and will replace the road sought to be abandoned. We wish the county road to be abandoned subject to completion of the said United States Government road.

Ernest C. Welch
George Bolt
Stephen Asbury
Joe Hefley
Sam Sargent
Don A. McIntosh
John Branson
Arthur Pawell
James W Overstreet
Braden B. Kelly
Mr. R. Armitage
Catherine E. Armitage

Board Of County Commissioners

Madison County Phone 843-5444

Virginia City, Montana 59755

CLARKE RAYMOND, CHAIRMAN
SHERIDAN, MONTANA

NEIL L. MORGAN, ENNIS, MONTANA
GUY D. GEORGE, SHERIDAN, MONTANA

June 2, 1969

as described in Petition of Eugene Lockman et al
We, the viewers of the county road running south from McAtee Bridge to
the Fish & Game Land, do hereby recommend that this road be abandoned
by the Madison County Commissioners.

Neil L. Morgan
Neil L. Morgan, Commissioner

Harold Helt
Harold Helt

Section 36, Range 1W Township 8S
* Section 1, Range 1W Township 9S

Big Sky Country

NOTICE OF HEARING OF BOARD OF COUNTY COMMISSIONERS

Notice is hereby given that the Board of County Commissioners of Madison County will, on Tuesday the 8th day of July, 1969, at the hour of 10:00 o'clock A.M., hear any and all protests which may be made to the closure of that certain County Road located on the westerly side of the Madison River, Madison County, Montana, described as follows:

That certain County Road on the westerly side of the Madison River, Madison County, Montana, commencing at Highway 327 (FAS Project No. 3-427) in Section 36, Township 8 South, Range 1 West, M.P.M. thence Southerly approximately through the center of Sections 1 and 12, Township 9 South, Range 1 West, M. P.M. to the South line of Section 12, Township 9 South, Range 1 West M.P.M.

all in accordance with the Petition of Eugene C. Walsh et al, seeking the closure of said road and Viewers' Report filed in favor of the same, subject to completion of a substitute road by the United States Government.

Said Hearing will be held at the County Commissioners' Room in the Courthouse in Virginia City, Montana, on the day above mentioned.

For the Board of County Commissioners of Madison County.

Mary A. Myers

Clerk and Recorder

AFFIDAVIT OF PUBLICATION

COUNTY OF MADISON }
STATE OF MONTANA } SS.

Warren N. Reichman
being duly sworn says that he is publisher and
printer of The Madisonian, a weekly newspaper
published in the City of Virginia City, County of
Madison, State of Montana; that the annexed
notice is a true copy which was published in said
newspaper for a period of One
successive weeks, commencing on the 27th
day of June, 1969
and ending on the 27th day of
June, 1969.

Warren N. Reichman
Publisher and Printer.

Subscribed and sworn to before me this 7th
day of July, 1969

Marcel S. Branner
Notary Public in and for the State of Montana,
residing at Virginia City, Montana. My commission
expires July 10, 1971.

NOTICE OF HEARING
OF BOARD

OF COUNTY COMMISSIONERS
Notice is hereby given that the Board
of County Commissioners of Madison
County will, on Tuesday the 8th day
of July, 1969, at the hour of 10:00 o-
clock A.M., hear any and all protests
which may be made to the closure of
that certain County Road located on
the eastern side of the Madison River,
Madison County, Montana, described
as follows:

That certain County Road on the
western side of the Madison River,
Madison County, Montana, com-
mencing at Highway 327 (FAS
Project No. 3-427) in Section 36,
Township 8 South, Range 1 West,
and thence southerly approx-
imately through the center of Sec-
tions 11 and 12, Township 8 South,
Range 1 West, M.P.M. the South
half of Section 12, Township 9
South, Range 1 West, M.P.M.
all in accordance with the Petition of
Eugene C. Walsh, et al seeking the
closure of said road and Viewers Re-
port filed in favor of the same, subject
to completion of a substitute road by
the United States Government.
Said Hearing will be held at the
County Commissioners' Room in the
Courthouse in Virginia City, Montana,
on the day above mentioned
for the Board of County Commis-
sioners of Madison County.

MARY A. MYERS,
Clerk and Recorder.

1 pub 6-27 33-1

#3

MADISON COUNTY, MONTANA

REGULAR SESSION JUNE 2, 1969

P. E. R. S. FUND

CLAIM NO.	WARRANT NO.				
10457	214	Public Employees Ret. System	Public Employers Retirement	\$	495.25

There being no further business, the Board adjourned at 4:00 o'clock P. M.

Attest:

Mary A. Myers
Clerk

Charles Raymond
Chairman

Pursuant to adjournment of Monday, June 2nd, the Board met in its room in the Courthouse on Tuesday, June 3rd, 1969. All members and the clerk were present.

Received from the U. S. Treasury Selective Service the sum of \$25.00 and from the City of Virginia the sum of \$10.00 for May rent of office space. Credit to General Fund.

The Treasurer's A-101 report of receipts, and also the Nursing Home Report were received, examined, approved and ordered filed. There are 12 private and 17 Welfare patients in the Nursing Home.

The Board sitting as The Board of Equalization met with Ferris Roberts representing the Bank of Sheridan and reached agreement on a tax refund.

The following Viewers' Report was examined, approved and ordered filed:

"We, the Viewers of the county road as described in the petition of Eugene Walsh, et al, running South from McAtee Bridge to the Fish & Game Land, do hereby recommend that this road be abandoned by the Madison County Commissioners.

Section 36, Twp. 8 S. R. 1 W. and
Section 1, Township 9 South, Range 1 West.

Neil L. Morgan, Commissioner
Harold Helt, Acting Surveyor"

Hearing on said petition was set for July 8, 1969 at 10 o'clock A. M. and the clerk was directed to give notice of such hearing by publication in the Madisonian and by posting.

There being no further business, the Board adjourned at 4:00 o'clock P. M.

Charles Raymond
Chairman

Attest:

Mary A. Myers
Clerk

Pursuant to adjournment of Tuesday, June 3rd, the Board met in its room in the courthouse on Wednesday, June 4, 1969. All members and the clerk were present.

CALL FOR BIDS

NOTICE IS HEREBY GIVEN that sealed bids will be received and opened in the Commissioners' room in the Courthouse in Virginia City, Montana at 1 P. M. on 9 July 1969 on one bridge to be constructed across the Ruby River at what is commonly known as The Wheatly bridge in Section 13, Township 4 South, Range 6 West, N. P. M. Specifications and blue-prints may be seen in the offices of Morrison-Mearle, Inc., Helena, Montana. The County reserves the right to reject and any all bids, and to waive any technicalities and informalities in favor of the County. Successful bidder must furnish a performance bond to the County.

236

COMMISSIONERS' PROCEEDINGS

3/236

7-8-69

In the matter of the closure of a portion of a county road as petitioned for by Eugene C. Walsh and others, it appearing that notice has been given to all parties properly concerned with the said closure and the Viewer's Report having been received and the Board having considered protests filed and the said Viewer's report, and it appearing to be proper in all respects that a portion of the requested road closure be granted; it is upon motion made, seconded and passed RESOLVED that the following portion of county roads be declared closed and the easement of the county in such county road be declared abandoned, to-wit:

That certain county road on the Westerly side of the Madison River, Madison County, Montana commencing at Highway 327 (FAS Project No. 3-427) in Section 36, Township 8 South, Range 1 West M.P.M., thence Southerly approximately through the center of Sections 1 and 12 to the South line of the North half of Section 12, Township 9 South, Range 1 West, M.P.M.

The Board met with Jerry Williams and Bill Beaman, representatives from the office of the State Forester and signed a mutual fire fighting agreement.

Annual
The/report of the State Examiner was received, examined and ordered filed.

There being no further business the Board adjourned at 4:00 o'clock P. M.

Charles R. Raymond
Chairman

Attest:

Mary A. Myers
Clerk

Pursuant to adjournment of Tuesday, the Board met in its room in the courthouse on Wednesday, July 9, 1969. All members and the clerk were present.

The Board met with Harry Odden, County Nursing home Administrator.

The Board received and rejected all bridge bids as advertised.

The Board adjourned as the Board of County Commissioners and convened as the Department of Public Welfare. Upon completion of all matters to come before it, the Board adjourned as the Department of Public Welfare and reconvened as the Board of County Commissioners.

Sealed bids were received on Madison County's gasoline, diesel fuel and heating oil needs for fiscal 1969-70 as follows:

"Board of County Commissioners
Virginia City, Montana

June 27, 1969

Dear Sirs: In response to your call for bids for approximately 20,000 fallons of #5 Fuel, we wish to tender our bid as follows, a firm bid for the year.

Special fuel (Conoco) in place of #5 (which you have used for several years) at \$6.0979 per gallon delivered into your tanks, minimum of 5,800 gallons loads.

Respectfully yours,

O. W. Grauman, Owner
McLeod Mercantile "

OWG/HHH

EXHIBIT

6

tabbles

Sec. 8

(36)

NAME OF ROAD:

Ennis - Wall
Creek

Commencing at: Sec. Twp. Range

NE $\frac{1}{4}$ 8 6S 1W

Road Declared:

Date: June 7, 1888

Authority: M - P. 239

Ending at: Sec. Twp. Range

Wall Creek 24 10S 1W
SW $\frac{1}{4}$ NE $\frac{1}{4}$

Road Changed:

Date:

Authority:

R/W Granted:

Road Closed: Part.

Date: Aug 5 1964

Authority: 2 - Page 372

ROAD DESCRIPTION & REMARKS:

Commencing at Dry Hollow at the south end of Ennis Lane, between Sections 8 and 9, T6S, R1W, and running in a southerly direction up the west side of the Madison River to a point at or near the mouth of Wall Creek.

Road Closed from the N. Boundary line of Sec. 12 10S-1W
South thru 12, 13, 24, & 25 10S-1W & 30 31 32 & 33 10S-1E
over

Abandon old Cty road From Center 36 8S-1W South thru 36
8S-1W & Sec 1 & 12 9S-1W. Replaced by FAS Project No
3-427. Closed July 8 1969

EXHIBIT

tabbles

7

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

BAR K RANCH, LLC

(b) County of Residence of First Listed Plaintiff Madison County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jeffrey J. Tierney
J. Devian Geddes
Goetz, Baldwin, & Geddes, P.C.
35 North Grand (zip 59715)
PO Box 6580
Bozeman, MT 59771
406.587.0618

DEFENDANTS

UNITED STATES OF AMERICA; STATE OF MONTANA; U.S. BUREAU OF LAND MANAGEMENT; U.S. FOREST SERVICE; MONTANA DEPARTMENT OF FISH, WILDLIFE & PARKS; MADISON COUNTY COMMISSION; MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION; IMERY TALC AMERICA, INC., f/k/a LUZENAC AMERICA, INC., WALSH EUGENE CARTER BYPASS TRUST

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input checked="" type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC § 2409a

Brief description of cause:

Quiet title and declaratory and injunctive relief

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

01/29/2019

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE